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JUN 17 2004

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In re application of Michael Seul et al.
Serial No. : 09/448,420
Filed : November 22, 1999
Attorney Docket No.: 42970-3

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: DECISION ON PETITION
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This is in response to applicants' petition under 37 CFR 1.181, filed April 26, 2004, and supplemental petition filed May 6, 2004.

BACKGROUND

Review of the file history shows that the application was filed on November 23, 1999 as a continuation of copending International Application No. PCT/US98/10719, which claims the benefit of U.S. Provisional Application Serial No. 60/047,472, filed May 23, 1997. The examiner issued two Office actions. After applicants filed a continued prosecution application, the examiner issued two more Office actions, the most recent being a final rejection mailed October 7, 2003. The examiner has since issued two detailed advisory actions in response to amendments after final rejection. On January 15, 2004 applicants submitted an appeal brief. On March 8, 2004 applicants filed a petition requesting that prosecution be reopened. That petition was denied in a decision mailed April 19, 2004. An examiner's answer was mailed April 21, 2004. Applicants filed a reply brief on May 3, 2004.

DISCUSSION

Applicants again request that prosecution be reopened. Applicants argue in the two pending petitions that the examiner has not fully complied with MPEP 1208(A)(10)(c and e), which require the examiner to point out where the prior art references relied upon by the examiner disclose the limitations of the claimed invention. This argument is not persuasive. Review of the examiner's answer shows that the examiner complied with the cited guidelines in detail, both in the statement of the rejections and in the response to applicants' arguments.

Applicants argue that the examiner should be required to file a supplemental examiner's answer. This argument is not persuasive. 37 CFR 1.193(b)(1) states, in part:

A supplemental examiner's answer is not permitted, unless the application has been remanded by the Board of Patent Appeals and Interferences for such purpose.

MPEP 1211 states, in part:

The Board has authority to remand a case to the examiner when it deems it necessary....In certain cases where the pertinence of the references is not clear, the Board may call upon the examiner for a further explanation.... Furthermore, the Board may remand an application to the examiner to prepare a supplemental examiner's answer in response to a reply brief.

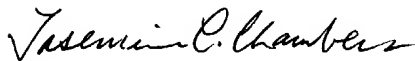
To grant applicants' request would be contrary to regulation. Moreover, should the Board require further clarification of the examiner's position, they may remand the application to the examiner for this purpose. The requirement for a supplemental examiner's answer is at the discretion of the Board.

DECISION

Applicants' petition is **DENIED**.

Any request for reconsideration or review of this decision must be made by a renewed petition and must be filed within TWO MONTHS of the mailing date of this decision in order to be considered timely.

Should there be any questions with regard to this letter please contact Bruce Campell by letter addressed to the Director, Technology Center 1600, P.O. Box 1450, Alexandria, VA, 22313-1450, or by telephone at (571) 272-0974 or by facsimile transmission at (571) 273-0974.



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